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10/642,865	08/18/2003	C. Thomas Hendrickson	076597.010100	3333
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EXAMINER VIG, NARESH				
ART UNIT 3629		PAPER NUMBER		
NOTIFICATION DATE 09/03/2009		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/642,865

Applicant(s)

HENDRICKSON ET AL.

Examiner

NARESH VIG

Art Unit

3629

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 101, 103-132 and 134-142 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 101, 103-132 and 134-142 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S5108)
Paper No(s)/Mail Date ____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

This is in reference to communication received 11 June 2009. Claims 102 and 133 are cancelled. Claims 101, 103 – 132 and 134 – 142 are pending for examination.

Response to Arguments

In response to applicant's argument that cited reference GPA is directed to present value determination and applicant's invention relates to the determination of the "future value" of landscape objects (plants) based on the cost of the plant itself and the cost to install the plant.

However, applicant is arguing a limitation not positively claimed by the applicant. Applicant claimed limitation directed to system and method for valuing landscape architectures. Applicant has not positively claimed forecasting a future value for the valuation of the landscape architecture. The future value determined is not used for valuation of the landscape architecture (see independent claims 101 and 142).

In response to applicant's argument that the present invention is further distinguished because the system creates a standardized criteria, values, and methodologies that enable a new asset class to be created. The asset class is used to offer products/services which were never envisioned by the authors of the GPA reference, the Council of Tree & Landscape Appraisers (CTLA), or their affiliated arborist clientele. Among those products is a comprehensive insurance offering based

on current and future values. Therefore, Applicants believe that such a system for valuing landscape to determine the future value of existing landscape is not obvious to one of ordinary skill in the art.

However, applicant is arguing a limitation which is not positively claimed by the applicant.

In response to applicant's argument that cited Yuyama reference does not relate to the field of landscape architecture management, and it is respectfully submitted that that reference is not within the same field of endeavor

However, cited reference Yuyama teaches that one of ordinary skill in the art can automate the forecasting of the value of an article. In addition, cited reference is and invention used in the insurance industry for calculation for a future value of an article of value.

Applicant's other arguments and concerns are responded to in response to pending claims.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 101, 103 – 132 and 134 – 142 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification does not adequately how one of ordinary skill in the art can determine growth rate of a landscape object like a plant, growth rate of which is directly associated the weather conditions, location of the landscape object, soil conditions, etc. Specification does not teach one of ordinary skill in the art would user applicant's claimed invention without undue experimentation to determine the growth rate of a product of nature like a plant which is directly impacted by the act of nature like weather conditions, location of the landscape object, soil conditions, etc.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 101, 103 – 107, 109 – 132, 134 – 137 and 139 – 142 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guide For Plant Appraisal hereinafter known as GPA in view of Sklarz et al. US Publication 2002/0087389 and further in view of Yuyama et al. US Patent 7,366,679.

Regarding claim 101, GPA teaches how items in landscape architectures can be valued. GPA does not specifically teach how a computer system can be used to automate the valuation of landscape architectures. However, Sklarz teaches using a computer system to architectures like real estate.

Therefore, at the time of invention, it would have been obvious to one of ordinary skill in the art to take teachings of GPA and computerize the GPA teachings by using a computer system to automate the valuation process to save on time and labor cost [In re Venner, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958)].

GPA in view of Sklarz teaches for valuing landscape architectures. GPA does not teach using a computer system for valuation. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to automate the time

intensive valuation process to save on expenses and calculate standardized and acceptable valuation reports(In re Venner, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958)). Hereinafter, GPA will be known as GPA with automation. Sklarz teaches using a computer system for valuation.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made computerize the manual process of estimating value of architecture used by landscape appraisers, by using teachings of Sklarz to provide computerized valuation decision tools to landscape appraisers, apply a known technique to a known device (method, or product) ready for improvement to yield predictable results, known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art

Even though GPA in view of Sklarz does not explicitly recite forecasting future value, however, Yuyama teaches system and method for forecasting future value of a property for insurance purpose.

Therefore, at the time of invention, it would have been obvious to one of ordinary skill in the art to modify GPA in view of Sklarz by adopting teaching of Yuyama to forecast future value for insurance purpose, combine prior art elements according to known methods to yield predictable results, apply a known technique to a known device or method ready for improvement to yield predictable result.

GPA in view of Sklarz and Yuyama teaches:

data model including information associated with a landscape architectural object; and

a processor operatively coupled to the data model, the processor including logic configured to determine a future value associated with the landscape architectural object based a material cost associated with the landscape architectural object and an installation cost associated with an installing of the landscape architectural object in a landscape architectural setting, and, logic configured with the teaching of GPA to determine a growth rate associated with the landscape architectural object based on at least one of an attribute of the landscape architectural object and an attribute of the landscape architectural setting included in the data model [GPA, page xiii. 85, 96, 97 GPA teaches that growth rate of a tree can be determined using of the knowledge about their species, and, historical market trend can be used to determine what the valuation of the tree can be; GPA, page xiii, 96, 128].

Regarding claim 103, it would have been obvious to one of ordinary skill in the art that GPA in view of Sklarz and Yuyama teaches logic configured wherein the attribute of the landscape architectural object included in the data model includes a frost tolerance [GPA, page 26].

Regarding claim 104, it would have been obvious to one of ordinary skill in the art that GPA in view of Sklarz and Yuyama teaches logic configured wherein the attribute of

the landscape architectural setting included in the data model includes a drainage [GPA, page 26].

Regarding claim 109, it would have been obvious to one of ordinary skill in the art that GPA in view of Sklarz and Yuyama teaches logic configured wherein the attribute of the landscape architectural object included in the data model can include a dimension [page 37].

Regarding claim 110, it would have been obvious to one of ordinary skill in the art that GPA in view of Sklarz and Yuyama teaches wherein the attribute of the landscape architectural object included in the data model can include geographic location.

Regarding claim 105, it would have been obvious to one of ordinary skill in the art that GPA in view of Sklarz and Yuyama teaches logic configured wherein logic configured to determine an environmental trend model based on environmental trend data included in the data model [GPA, page 5, 6, 26].

Regarding claim 106, it would have been obvious to one of ordinary skill in the art that GPA in view of Sklarz and Yuyama teaches logic configured wherein the environmental trend data included in the data model includes pollution data [GPA, page 26, 27].

Regarding claim 107, it would have been obvious to one of ordinary skill in the art that GPA in view of Sklarz and Yuyama teaches logic configured to determine a size of the landscape architectural object based on the determined growth rate [GPA, page 27]; and

to determine the material cost associated with the landscape architectural object based on the determined size [page 27].

Regarding claim 111 – 112, it would have been obvious to one of ordinary skill in the art that GPA in view of Sklarz and Yuyama teaches logic configured to determine regional pricing information associated with the landscape architectural object and the installing of the landscape architectural object in the landscape architectural setting based on information included in the data model (replacement cost) [GPA, page xiii].

Regarding claim 113, GPA in view of Sklarz and Yuyama teaches logic configured to update periodically the regional pricing information based on current regional pricing information associated with the landscape architectural object and the installing of the landscape architectural object in the landscape architectural setting included in the data model.

Regarding claim 114, it would have been obvious to one of ordinary skill in the art that GPA in view of Sklarz and Yuyama teaches logic wherein the regional pricing information industry standard pricing information [GPA, page 104].

Regarding claim 115, it would have been obvious to one of ordinary skill in the art that GPA in view of Sklarz and Yuyama teaches logic includes at least one of labor contracting quotes from at least one of industry publications [GPA, page 104].

Regarding claims 116 – 117, it would have been obvious to one of ordinary skill in the art that GPA in view of Sklarz and Yuyama teaches logic configured to determine a macro-economic trend model based on macro-economic trend data included in the data model (replacement cost approach considers inflation factor, also, for example interest on investment, interest is based on treasury bill, for example, prime + margin) [GPA, page 129].

Regarding claim 118 – 119, it would have been obvious to one of ordinary skill in the art that GPA in view of Sklarz and Yuyama teaches logic configured to determine a property value trend model based on property value trend data included in the data model [GPA, page 90, 129].

Regarding claim 120, it would have been obvious to one of ordinary skill in the art that GPA in view of Sklarz and Yuyama teaches logic configured to adjust the future value based on a developmental program associated with a development of the landscape architectural object in the landscape architectural setting [GPA, page 90, 91].

Regarding claim 121, it would have been obvious to one of ordinary skill in the art that GPA in view of Sklarz and Yuyama teaches logic configured to adjust the future value based on a prescription care program configured to address an abnormality in at least one of the landscape architectural object and landscape architectural setting [page 129].

Regarding claim 122, it would have been obvious to one of ordinary skill in the art that GPA in view of Sklarz and Yuyama teaches logic configured to adjust the future value based on a total future value associated with at least one of a plurality of landscape architectural [GPA, chapter 9].

Regarding claims 123 – 124, it would have been obvious to one of ordinary skill in the art that GPA in view of Sklarz and Yuyama teaches logic configured to determine a value associated with the landscape architectural object based on an aesthetic contribution of the object to the landscape architectural [GPA, page 2,3, 52]

Regarding claim 125, it would have been obvious to one of ordinary skill in the art that GPA in view of Sklarz and Yuyama teaches logic configured to determine a present value of the landscape architectural object based on the determined future value of the object (Trunk Formula Method).

Regarding claim 126, it would have been obvious to one of ordinary skill in the art that GPA in view of Sklarz and Yuyama teaches logic configured to identify at least one attribute associated with the landscape architectural object included in the data model; and

logic configured to present a report including the future value and the at least one attribute associated with the landscape architectural object [GPA, page 64, 130].

Regarding claims 127 – 130, it would have been obvious to one of ordinary skill in the art that GPA in view of Sklarz and Yuyama teaches logic configured to present in the report a developmental program including at least one of a care instruction and a prescription care product data included in the data model associated with a development of each landscape architectural object (applicant is claiming text presented on the report as their claimed invention). Cited reference GPA in view of Sklarz and Yuyama teaches to generate report, since the instant claim is a system claim, cited reference GPA is capable of printing user defined text on the report.

Regarding claim 131, it would have been obvious to one of ordinary skill in the art that GPA in view of Sklarz and Yuyama teaches logic configured to determine a cost associated with the developmental program based on information included in the data model [GPA, page 125-132]; and

logic configured to present the cost associated with the developmental program in the report [GPA, page 125-132].

Regarding claim 132, it would have been obvious to one of ordinary skill in the art that GPA in view of Sklarz and Yuyama teaches logic configured to determine an increase in the future value associated with an implementation of the developmental program [GPA, page 94]; and

logic configured to present the increase in the future value in the report [GPA, page 94, 125-132].

Regarding claim 134, as responded to earlier, it would have been obvious to one of ordinary skill in the art that GPA in view of Sklarz and Yuyama teaches logic capable to present an image of the landscape architectural object in the report (applicant is claiming content of the report as their claimed invention).

Regarding claim 135, it would have been obvious to one of ordinary skill in the art that GPA in view of Sklarz and Yuyama teaches logic wherein the attribute associated with the landscape architectural object includes a geographic location [GPA, page 127].

Regarding claim 136, it would have been obvious to one of ordinary skill in the art that GPA in view of Sklarz and Yuyama teaches logic to categorize the at least one landscape architectural object into an object type (e.g. type of tree) wherein the presenting is based on the categorized object type[GPA, page 54, 125-132].

Regarding claim 137, GPA in view of Sklarz and Yuyama teaches logic configured with capability to gather an inventory of an architectural object and present the inventory in the report (e.g. appraisal report).

Regarding claim 139, as responded to earlier, it would have been obvious to one of ordinary skill in the art that GPA in view of Sklarz and Yuyama teaches logic configured to identify at least one attribute associated with the landscape architectural setting included in the data model; and

logic configured to present the at least one attribute associated with the landscape architectural setting in the report [page 125-132].

Regarding claim 140, as responded to earlier, it would have been obvious to one of ordinary skill in the art that GPA in view of Sklarz and Yuyama teaches logic wherein the at least one attribute of the landscape architectural setting includes a geographic location.

Regarding claim 141, it would have been obvious to one of ordinary skill in the art that GPA in view of Sklarz and Yuyama teaches logic configured to gather information associated with at least one of a user of information included in the report and an owner of the landscape architectural setting; and

logic configured to present the information associated with the least one of a user and an owner in the report [GPA, page 125-132].

Regarding claim 142, as responded to earlier in response to claims 101-132 and 134-141, GPA with automation (In re Venner, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958)) hereinafter known as GPA with teaching of Sklarz, teaches computer executable instructions for the computer (obvious that instruction for a computer are on a computer readable medium so the computer can read the instructions from the medium and perform as directed by the instructions. GPA in view of Sklarz and Yuyama teaches

- identifying a landscape architectural object;

- determining an estimated growth rate associated with the landscape architectural object;

- determining regional pricing information associated with at least one of the landscape architectural object and the installing of the landscape architectural object in the landscape architectural setting;

- determining at least one of a material cost associated with the landscape architectural object and an installation cost associated with an installing of the landscape architectural object based on the determined growth rate and regional pricing information; and

- determining a future value associated with the landscape architectural object based on at least one of the material cost associated with the landscape architectural object and the installation cost associated with an installing of the landscape architectural object [GPA, page xiii. 85, 96, 97 GPA teaches that growth rate of a tree

can be determined using of the knowledge about their species, and, historical market trend can be used to determine what the valuation of the tree can be].

Claims 108 is rejected under 35 U.S.C. 103(a) as being unpatentable over Guide For Plant Appraisal hereinafter known as GPA in view of Sklarz et al. US Publication 2002/0087389 and further in view of and Yuyama et al. US Patent 7,366,679 and Modern Real Estate Practice by Galaty et al. hereinafter known as Galaty.

Regarding claim 108, GPA in view of Sklarz and Yuyama does not explicitly teach to determine a depreciation rate associated with the landscape architectural object based on at least one of an attribute of the landscape architectural object. However, GPA in view of Sklarz and Yuyama teaches esthetics like decorative wall to landscape [page 2]. Galaty teaches depreciation of objects for cost recovery [Galaty, page 385].

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify GPA in view of Sklarz and Yuyama as taught by Galaty to determine valuation using cost method.

Claim 138 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guide For Plant Appraisal hereinafter known as GPA in view of Sklarz et al. US Publication

2002/0087389 and further in view of and Yuyama et al. US Patent 7,366,679 and Tani et al. Japan Publication JP 2002288433 hereinafter known as Tani.

Regarding claim 138, GPA in view of Sklarz and Yuyama does not teach logic configured to determine insurance premium information based on the future value of the at least one landscape architectural object. However, Tani teaches idea of determining insurance premium based on future value (future cost for replacement).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify GPA in view of Sklarz and Yuyama as taught by Tani to prevent loss for reimbursement due to inflation.

GPA in view of Sklarz and Yuyama and Tani teaches capability of presenting the insurance premium information in the report.

Conclusion

Applicant is required under 37 CFR '1.111 (c) to consider the references fully when responding to this office action.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NARESH VIG whose telephone number is (571)272-6810. The examiner can normally be reached on Mon-Thu 7:00 - 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

August 30, 2009

/Naresh Vig/
Primary Examiner, Art Unit 3629